



United States Department of Agriculture



OFFICE OF INSPECTOR GENERAL

IMPORTANT NOTICE

This audit report contains sensitive information that has been redacted for public release, due to privacy concerns.

Forest Service Initiatives to Address Workplace Misconduct

Audit Report 08601-0008-41

We reviewed whether FS' actions in response to sexual harassment and sexual misconduct complaints sufficiently addressed workplace concerns.

OBJECTIVE

Our objectives were to evaluate whether the actions FS took in its Pacific Southwest Region (Region 5) in response to complaints of sexual misconduct and harassment in the workplace (1) were effectively implemented as outlined in the joint agreement with OGC and OASCR, and (2) sufficiently addressed workplace concerns.

REVIEWED

We reviewed applicable laws, regulations, and agency policies, interviewed relevant officials and current and former FS employees, and examined case intake forms.

RECOMMENDS

FS should provide training and guidance for reference checks and the 24-hour reporting requirement, ask specific questions regarding applicants' prior histories, establish disciplinary guidelines for allegations not reported within 24 hours, and establish internal guidelines for documenting the justification when deviating from the recommended penalty.

WHAT OIG FOUND

We reviewed 11 cases of substantiated allegations of sexual harassment and sexual misconduct in the Forest Service's (FS) Pacific Southwest Region (Region 5) from fiscal years (FY) 2013–2017. We found two, and likely a third, cases in which former supervisors did not inform FS hiring officials about employees' prior histories. These employees were later selected for supervisory positions in other regions. This occurred because hiring officials relied on reference checks with the employees' former supervisors, who did not disclose the misconduct.

We also reviewed intake forms for 125 complaints of sexual harassment and sexual misconduct in Region 5 for FYs 2014–2017, and we found that 18 of these cases were not reported by FS managers and supervisors within the required 24-hour timeframe. In addition, we found that in 13 of these 18 cases, FS took no action against management officials who did not timely report these allegations. This occurred because FS supervisors and managers did not appear to fully understand the 24-hour reporting requirement, and FS lacked specific guidelines on disciplinary actions to take when addressing untimely reporting.

Lastly, we found that for 4 of the 11 cases we reviewed where the allegations of sexual harassment and sexual misconduct were substantiated, the decided action was less than the corresponding penalty listed in USDA's Guide for Disciplinary Penalties. Though deviating from recommended penalties is allowed, in three of the cases FS officials did not adequately document their justification for deviating from the penalty outlined in the Guide.

Regarding our first objective, we had no reportable findings. Although some are still ongoing, FS had generally implemented all of the action items outlined in the joint agreement with the Office of the General Counsel (OGC) and the Office of the Assistant Secretary for Civil Rights (OASCR) (see Exhibit B).

FS generally agreed with our findings and recommendations, and we accepted management decision on all eight recommendations.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: February 11, 2019

AUDIT
NUMBER: 08601-0008-41

TO: Victoria Christiansen
Chief
Forest Service

ATTN: Antoine Dixon
Chief Financial Officer

FROM: Steve Rickrode
Acting Assistant Inspector General for Audit

SUBJECT: Forest Service Initiatives to Address Workplace Misconduct

This report presents the results of the subject audit. Your written response to the official draft, dated November 30, 2018, is included in its entirety at the end of the report. Your response and the Office of Inspector General's (OIG) position are incorporated into the relevant sections of the report. Based on your written response, we are accepting management decision for all audit recommendations in the report, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. For agencies other than the Office of the Chief Financial Officer (OCFO), please follow your internal agency procedures in forwarding final action correspondence to OCFO.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

The Forest Service (FS) manages more than 193 million acres of public land. The agency currently has a workforce of over 27,000 employees, and women make up roughly 36 percent of that workforce.¹ FS' Pacific Southwest Region (Region 5) has a workforce of over 4,500 employees, and women comprise roughly 27 percent of that workforce.² In November 2014, Congress requested that OIG review allegations of sexual harassment, attempted sexual assault, and whistleblower retaliation within FS' Region 5.³ In December 2014, OIG initiated a preliminary review of Region 5's work environment to determine the actions FS had taken to address Congress' concerns.

In May 2015, OIG completed its preliminary review and concluded that FS had taken constructive steps towards improving its work environment. For instance, in December 2014, FS, the Office of the Assistant Secretary for Civil Rights (OASCR), and the Office of the General Counsel (OGC) entered into a joint agreement to strengthen the work environment in Region 5, including specific actions to improve the environment for women. The joint agreement included action items to increase FS' commitment to create a respectful, equitable, and safe workspace for all employees, with full accountability for any wrongdoing. However, a number of the action items in the joint agreement at the time of our initial review were still in the planning stages. As a result, OIG postponed further audit work until FS had more time to implement all of the action items in the joint agreement.

In November 2016, OIG received another request from Congress urging OIG to further review allegations of sexual misconduct and harassment and whistleblower retaliation within FS' Region 5.⁴ In a December 2016 hearing, Congressional members were concerned that sexual misconduct and harassment still persisted within the FS and demanded that changes be made.⁵ Due to these Congressional concerns, OIG expedited its timeline for an audit of Region 5.

¹ This number does not include an additional 10,902 employees that FS hired on a temporary basis. Roughly 29 percent of its temporary workforce were women. In the summer months, FS adds thousands of seasonal employees, most of whom are engaged in firefighting.

² This number does not include an additional 2,316 employees that FS' Region 5 hired on a temporary basis. Roughly 22 percent of Region 5's temporary workforce were women. In the summer months, Region 5 adds thousands of seasonal employees, most of whom are engaged in firefighting.

³ Congressional members on the Committee on Oversight and Government Reform requested, in a letter dated November 19, 2014, that OIG review allegations of sexual harassment, attempted sexual assault, gender discrimination, and whistleblower retaliation in FS' Region 5.

⁴ Members from both the House of Representatives and the Senate requested in a letter dated November 10, 2016, that OIG conduct an audit into the FS' revised sexual misconduct procedures to ensure that (1) there are adequate processes in place to report sexual misconduct, (2) survivors and whistleblowers are protected from retaliation, (3) perpetrators found to have engaged in sexual misconduct and supervisors who have not properly implemented FS procedures are held accountable, and (4) the agency has improved its workplace environment.

⁵ Congressional Hearing, House Oversight and Government Reform Committee Holds Hearing on Sexual Harassment and Gender Discrimination at the Agriculture Department (December 1, 2016).

FS has an ongoing relationship with OASCR and OGC regarding FS' past consent decrees and class action suits, one of which related specifically to sexual harassment⁶ and sexual misconduct.⁷ Tensions and mistrust among employees in FS' Pacific Southwest Region (Region 5) have built up over time, dating back to the consent decrees of 1981⁸ and 2001.⁹ In September 2014, a *New York Times* article about women alleging harassment and abuse from FS firefighting crews prompted a formal collaboration between FS, OASCR, and OGC to strengthen and enhance compliance with FS' sexual harassment and sexual misconduct policies.

In the joint agreement with OASCR and OGC that focused solely on Region 5, FS was required to revise Region 5's standard operating procedures for reporting and responding to allegations of sexual misconduct and sexual harassment and to strengthen and enhance compliance with its sexual misconduct policies. For example, Region 5 strengthened and enhanced compliance with its sexual misconduct policies by stating management's specific responsibility for reporting allegations of sexual misconduct and sexual harassment in a separate policy memorandum. The policy memorandum also placed a greater emphasis on potential discipline, including specific mention of potential termination for violation of the policy. In addition, Region 5 strengthened its standard operating procedures to require that the aggrieved employee be provided a written acknowledgment within 48 hours that his or her allegation was received and was being processed

⁶ FS defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: a) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; b) Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment." Examples of sexual harassment include: graphic verbal commentaries, verbal exchanges, or jokes with a sexual connotation; behavior with sexual overtones that is intimidating or offensive to the recipient, or to one who observes such behavior or other displays; unnecessary or inappropriate touching or grabbing; making lewd gestures; pressuring for sexual activity; offensive sexual flirtation, advances, or propositioning; using sexually degrading words to describe an individual; and/or the display in the workplace of sexually suggestive objects, pictures, computer screen savers, or written materials. Sexual harassment can occur at any time and any location, regardless of whether the acts occur on or off the workplace or federal property, and whether they occur during or after work hours. FS Washington Office, Forest Service Manual 1700-Civil Rights, Chapter 1760-Equal Employment Opportunity (August 25, 2016). This manual was amended on August 7, 2017; however, the changes made did not affect FS' definition of sexual harassment.

⁷ Inappropriate conduct of a sexual nature (also referred to by FS as sexual misconduct) "can create or be the basis of sexual harassment. It may consist of an isolated incident of behavior with a sexual connotation or could include repeated unwelcomed flirtations; repeated unwanted requests for dates; or repeated suggestive comments about or references to someone's anatomy; or ridicule or teasing regarding an employee's gender identity, gender expression, or sexual orientation." FS Washington Office, Forest Service Manual 1700-Civil Rights, Chapter 1760-Equal Employment Opportunity (August 25, 2016). This manual was amended on August 7, 2017; however, the changes made did not affect FS' definition of sexual misconduct.

⁸ In 1973, an employee filed a class action suit alleging that FS Region 5 discriminated against females with respect to hiring and promotions. On July 1, 1981, the Court approved a consent decree in which FS Region 5 agreed to strive to eliminate under-representation of women in all series and grades for 5 years. The Court extended the consent decree, and after its expiration in 1992, the parties agreed to a 2-year settlement agreement that ended in 1994.

⁹ In 1995, two employees filed a class action suit alleging that FS Region 5 retaliated against and created a hostile work environment for women. On February 6, 2001, the Court approved a settlement agreement, which required FS to take specific actions regarding civil rights and personnel programs to ensure a work environment free of sexual harassment and retaliation. In 2003, the parties agreed to extend the duration of the settlement agreement until 2006. Afterwards, the Court determined that FS had substantially complied with the settlement agreement and denied Plaintiffs' requests to extend the duration of the settlement agreement.

according to the region's protocols. These changes were enacted between June 2015 and October 2016.

FS uses the USDA Guide for Disciplinary Penalties¹⁰ to assist officials in selecting appropriate penalties for disciplining employees who have engaged in misconduct. The Guide has a dedicated section specific to sexual harassment and sexual misconduct. While the Guide does not cover every possible offense, it does address the more common types of offenses and the penalties typically associated with an offense once it is substantiated.

The Merit Systems Protection Board (MSPB) issued a report in September 2005 regarding the use of reference checking in the public and private sectors.¹¹ It identified best practices, which, when followed, increase the contribution reference checking makes to hiring decisions. The report also noted that there are strong legal protections for Federal employers who make reference check inquiries of those who are able to provide job-related information about applicants.

In order to ensure a consistent approach to addressing harassment, FS created one comprehensive agency anti-harassment policy in August 2016, hereafter referred to as the National Anti-Harassment Policy, which expanded and improved on the previous Pacific Southwest Region policy. FS wanted to strengthen the policy to outline clear expectations for employees and supervisors, ensure a prompt and effective process for handling sexual misconduct complaints, and ensure effective support systems for those involved. With OASCR's concurrence, FS rescinded the Pacific Southwest Region policy and enacted the National Anti-Harassment Policy in July 2017.

Both the Pacific Southwest Region policy and National Anti-Harassment Policy require management officials who receive reports of sexual assault, sexual violence, or sexual harassment to notify the appropriate FS officials of the issue within 24 hours of receiving the report of sexual assault, sexual violence, or sexual harassment.¹² Initial notification can be made by email or telephone, but it must describe the issue completely. An intake form is used to document the complaint that must be submitted to the designated FS officials within 3 duty days of receiving a report of sexual assault, sexual violence, or sexual harassment. In addition, with reports of sexual assault or sexual violence, management officials are required to notify local law enforcement immediately, not to exceed 24 hours.

¹⁰ United States Department of Agriculture, Department Personnel Manual, Chapter 751, Appendix A, USDA Guide for Disciplinary Penalties (June 29, 1994).

¹¹ MSPB made its recommendations in accordance with the requirements specified in 5 U.S.C. 1204(a)(3). "Reference Checking in Federal Hiring: Making the Call," *A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board*, Sept. 2005.

¹² The primary difference between the two policies regarding the reporting requirement is who would be notified when there are allegations of sexual harassment and sexual misconduct. The regional policy required regional office, civil rights, and employee relations personnel to be notified. Supervisors or managers also informed the Forest Supervisor or Deputy Forest Supervisor, the Staff Director or Deputy Staff Director, and the Civil Rights Officer. The National Anti-Harassment Policy requires notification to the Field Service Center Civil Rights Director and the Employee Relations Supervisor.

Interim Report

In July 2017, FS amended its National Anti-Harassment Policy requiring that all complaints of sexual harassment and sexual misconduct go directly to a misconduct investigation, eliminating the need for management inquiries. FS made the policy change to strengthen its process for handling these types of complaints, which it considers “a particularly egregious form of harassment and a form of sex discrimination prohibited by law and regulation.” The change in policy acknowledged the seriousness with which FS considers complaints that adversely affect its employees and the overall work environment.

Beginning in March 2018, FS agreed, for a trial period of at least 1 year, to only use contract investigators or investigators from other Federal agencies to investigate complaints of sexual harassment and sexual misconduct in its Pacific Southwest Region. At the end of the trial period, FS would assess the overall effectiveness of using only contract investigators or investigators from other Federal agencies to investigate sexual harassment and sexual misconduct cases and whether the practice should be made permanent. FS took this action in response to an OIG interim report issued during this audit due to the sensitivity of the subject matter and the need to ensure that the investigative process is fair and unbiased.¹³

Objectives

Our objectives were to determine whether the actions FS took in its Pacific Southwest Region (Region 5) in response to complaints of sexual misconduct and harassment in the workplace: (1) were effectively implemented as outlined in the joint agreement with OGC and OASCR; and (2) sufficiently addressed workplace concerns.

Regarding our first objective, we had no reportable findings. Although some are still ongoing, FS had generally implemented all of the action items outlined in the joint agreement with OGC and OASCR (see Exhibit B). The findings in this report address the additional actions FS should take to address workplace concerns regarding its handling of sexual harassment and sexual misconduct complaints.

¹³ OIG Audit Report 08601-0008-41(1), *Forest Service Initiatives to Address Workplace Misconduct—Interim Report* (March 2018).

Finding 1: FS Hiring Officials Promoted Employees with Undisclosed Prior Histories of Sexual Harassment and Sexual Misconduct

We reviewed 11 cases of substantiated allegations of sexual harassment and sexual misconduct from FYs 2013–2017 and found two, and likely a third, cases in which former supervisors did not inform FS hiring officials about employees’ prior histories. Those employees were later selected for supervisory positions in other FS regions. This occurred because hiring officials relied on reference checks with the employees’ former supervisors, who did not disclose the misconduct when they submitted the reference checklist.¹⁴ As a result, FS hiring officials may lack critical information when making hiring decisions. Furthermore, employees may lose trust or confidence in Region 5’s commitment to a zero tolerance policy regarding sexual harassment and sexual misconduct in the workplace.¹⁵ Lastly, these actions could adversely affect employee morale within the agency.

According to the U.S. Merit Systems Protection Board (MSPB), “[p]roperly conducted reference checks are a key component of a hiring process that will select the best employees from each pool of applicants,” and “reference checking also helps Federal employers identify and exclude applicants with a history of inappropriate workplace behavior.”¹⁶ Further, the MSPB states that “the right to privacy is not absolute. Employment laws recognize that employers have special needs to access work history information.” Also, “employment-related questions about an applicant’s behavior may, as a general rule, be asked and answered with minimal risk of legal liability so long as an applicant’s rights are not knowingly violated.”

We obtained the documentation for the 11 substantiated cases of sexual harassment and sexual misconduct, which includes inquiry reports, written statements, case assessments, and notices of proposed disciplinary actions, from FS.¹⁷ FS provided additional information about these employees’ transfers, which included the reference checks we reviewed.

We found that FS hiring officials selected and reassigned three employees, who were the subject of substantiated allegations of sexual harassment, sexual misconduct, and/or creating a hostile work environment, to supervisory positions in other regions. [REDACTED]

¹⁴ The reference checklist is a form used by FS hiring officials to document their reference checks on applicants applying for FS positions. OIG obtained, for two of the employees, the reference checklists that indicated former supervisors did not disclose information about the employees’ prior histories of sexual harassment and sexual misconduct. The third reference checklist no longer existed and was shredded due to the age of the record, according to FS human resource management staff. In this case, we concluded that the former supervisor likely did not inform the FS hiring official about the employee’s prior history because the reference checklist that would have been used for the reference check did not specifically ask about the employee’s prior history. If obtained, this information would have been documented on the reference checklist. There was nothing else in the case files we reviewed indicating former supervisors informed FS hiring officials about employees’ prior histories.

¹⁵ FSM 1700 Civil Rights—Chapter 1760—Employment Opportunity—Region 5 has a zero tolerance policy for sexual harassment and does not tolerate or condone any form of sexual harassment, nor does it tolerate retaliating against any employee for reporting harassment or assisting in an investigation of a claim.

¹⁶ A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, *Reference Checking in Federal Hiring: Making the Call*, Sept. 2005.

¹⁷ FS determined 11 substantiated cases of sexual harassment and sexual misconduct out of the 35 cases we selected for review. The selected cases were from FYs 2013–2017.

Prior to the employees' reassignments, [REDACTED]

[REDACTED]
18

The three cases are described below.

Case #1: [REDACTED]

Case #2: [REDACTED]

Case #3: [REDACTED]

For two of these cases, we reviewed former supervisors' answers in the reference checklists and found that the former supervisors did not disclose information regarding the two employees' prior histories.¹⁹ [REDACTED]

[REDACTED] In addition, we found that there were no specific questions asking about the employee's character or whether the employee had a history of misconduct affecting his or her suitability for the job. Hiring officials did ask general questions that were on the checklist.²⁰ However, the former supervisors did not disclose the misconduct associated with the employees when asked these two general questions.

¹⁸ [REDACTED]

¹⁹ We reviewed the reference checklists for Cases 1 and 3. According to FS human resource management staff, the reference checklist for Case 2 no longer existed because it was shredded due to the age of the record.

²⁰ Reference checklists included the two general questions: (1) Is there any information that you would like to add concerning this employee? and (2) What do you see as this employee's challenges?

According to an FS official, former supervisors may have been reluctant to disclose information about the employees' prior history due to privacy or liability concerns. However, according to the MSPB, "providing reference information need not be avoided—it can be done within the bounds of legality."²¹ MSPB also notes that reference checkers, in general, have a qualified immunity against charges of invasion of privacy, so long as they follow the proper guidelines.

Overall, we identified several improvements that FS can make to improve the process when making hiring decisions. FS should provide additional training and guidance regarding all supervisors' responsibility to provide accurate and reliable information during reference checks. Asking more specifically about current or former employees' prior history regarding serious misconduct provides greater assurance that the supervisor providing the reference will be more forthcoming about this kind of information. Additionally, extra training on privacy and liability will help ensure that supervisors will be more inclined to share this type of information with hiring officials. Although not required, as a best business practice, hiring officials should also obtain information directly from human resources management about an employee's prior history to ensure that all relevant information is available to make an informed decision in hiring. Hiring officials should not rely solely on the information provided by the former supervisors.

An FS management official suggested that the referencing process should also include directly asking current and former FS employees applying for positions within the agency additional questions that could provide information on their behaviors in work settings. This process would hold the employee responsible and accountable for providing truthful and honest information during the application process. OIG agreed with the suggestion to include these interview questions in the overall process of interviewing applicants.

These improvements should help ensure that appropriate guidance is given to strengthen the process of assessment and evaluation on the advancement of current employees. These improvements would also help ensure the suitability of future employees with prior histories of allegations of sexual harassment and sexual misconduct through accurate exchange of information in the interview and reference-checking process.

Recommendation 1

Provide additional training and guidance to supervisors on the MSPB and OPM guidelines regarding their responsibility to provide complete and accurate information to hiring officials when asked for references on current and former FS employees seeking employment or promotions within FS. The training and guidance should also cover privacy and liability concerns when disclosing employee information.

²¹ A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board, *Reference Checking in Federal Hiring: Making the Call*, Sept. 2005.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service concurs with this recommendation. FS requires all hiring managers to complete the Hiring Matters! training in AgLearn. This training is mandated by USDA Office of Human Resources Management (OHRM) and it covers Merit System Principles, Prohibited Personnel Practices, and provides guidance regarding interviews and conducting reference checks. Reports are available to show training participation and completion.

To supplement the above required training, FS will:

1. Review and update previous guidance provided to supervisors and managers covering their responsibility to reply completely and accurately when asked for references on current and former Forest Service (FS) employees seeking employment or promotions within FS;
2. Develop scenario-based training for supervisors which supplements the required USDA training with an emphasis on legally providing information when asked for a reference check. AgLearn, or another training platform or methodology, will be utilized to house this training which will allow for tracking; and
3. Ensure scenario-based training referred above covers privacy and liability concerns when disclosing employee information.

FS provided an estimated completion date of June 1, 2019, for this action.

OIG Position

We accept FS' management decision on this recommendation.

Recommendation 2

Add, to the standardized list of questions that hiring officials ask the supervisors of current and former FS employees applying for positions within the agency, questions about whether applicants have a prior history of serious misconduct, the nature of the misconduct, and their suitability for the position despite the misconduct.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service generally concurs, but has concerns with the legality of implementing the recommendation as written. Before moving forward we will need to

seek guidance and concurrence from the Office of the General Counsel (OGC) and OHRM. Our initial concerns include:

- 1) Protecting the Agency from liability caused by hiring managers asking questions that are too detailed regarding prior discipline. This could lead to violations of Merit Systems Principles and/or the Privacy Act.
- 2) Placing supervisors in the position of having to violate a settlement agreement that requires them to not disclose certain information without legal risk to the Agency or themselves.
- 3) Inconsistent approaches for internal and external applicants which may lead to potential violations of Merit System Principles and the USDA Merit Promotion Plan. Reference checks must be consistent for all applicants to maintain fair and open competition. Asking different questions to different applicants could lead to these violations.

The Agency will collaborate with OGC and OHRM to see if there is an appropriate way that we can revise our existing, optional, standardized template containing reference questions to include questions responsive to OIG's recommendation.

FS provided an estimated completion date of October 1, 2019, for this action.

OIG Position

We accept FS' management decision on this recommendation.

Recommendation 3

Add, to the standardized list of questions that hiring officials ask the applicants applying for positions within FS, questions about whether applicants have a prior history of serious misconduct, the nature of the misconduct, and their suitability for the position despite the misconduct.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service generally concurs with this recommendation. Interviews are an effective tool in evaluating candidates for appointment to Federal positions. FS provides interview and reference check guides that are on the Human Resource Management (HRM) website. The guides outline the role and responsibility of the hiring official and give parameters of what can be asked. Asking specific questions regarding an employee's prior discipline and the specifics around that could lead to violations of the Privacy Act and Merit Systems Principles which could create liability for the Agency.

The Agency will collaborate with OGC and OHRM to see if there is an appropriate way that we can require questions responsive to OIG's recommendation.

FS provided an estimated completion date of December 1, 2019, for this action.

OIG Position

We accept FS' management decision on this recommendation.

Recommendation 4

Establish guidelines for hiring officials to contact human resources management to determine whether current or former employees (including seasonal employees) applying for positions within FS have prior histories of serious misconduct and the nature of the misconduct.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service generally concurs with the intent of this recommendation but has significant concerns with the legality and feasibility of implementing it as written. Areas of concern that the Agency needs to avoid are violations of the Privacy Act, Merit Systems Principles, or any other employment law. For example, we do not want to set up a process where an individual could release information in violation of the Privacy Act or Office of Personnel Management rules and regulations on appropriate use/release of information contained within personnel files. Likewise, we do not want to increase risk in employment litigation caused by creating a higher bar or enacting a more strenuous process for internal applicants. This is something that could definitely be argued is a violation of Merit System Principles requiring fair, equal, and open competition based on the duties of the position. The Agency will collaborate with OGC and OHRM and ask them to determine if this recommendation is achievable.

FS provided an estimated completion date of December 1, 2019, for this action.

OIG Position

We accept FS' management decision on this recommendation.

Finding 2: FS is Not Timely Reporting All Complaints of Sexual Harassment and Sexual Misconduct

We reviewed the intake forms for 125 complaints of sexual harassment and sexual misconduct in Region 5 from FYs 2014–2017 and found that 18 of these cases were not reported within the required 24-hour timeframe. We also found that in 13 of these 18 cases, FS took no action against management officials who did not timely report these allegations. This occurred because FS supervisors and managers did not appear to fully understand the 24-hour reporting requirement, and FS lacked specific guidelines on disciplinary actions to take when addressing supervisors’ and managers’ untimely reporting. As a result, FS employees may lack confidence in FS’ willingness and ability to timely follow up on their allegations of sexual harassment and sexual misconduct, and may therefore be more reluctant to report these types of complaints.

The Region 5 FS manual states, “[a]ll supervisors and managers are required to report all allegations or incidents of sexual harassment, sexual misconduct, or allegations of reprisal (retaliation for reporting sexual harassment-related civil rights activity) within 24-hours of becoming aware of those allegations or incidents and to take prompt and appropriate action to address such conduct. Failing to meet this requirement may result in corrective action, up to and including removal and referral to appropriate law enforcement, if warranted.”²² The Washington Office’s FS manual also reiterates that FS officials must take appropriate steps, which include implementing appropriate corrective and disciplinary action, when an employee, manager, or supervisor fails to follow procedures.²³

Despite recent policies, we still found instances where sexual harassment and sexual misconduct allegations were not reported timely. We also found that FS did not always take action when supervisors or managers failed to report these types of allegations timely. Our findings are detailed below.

Sexual harassment and sexual misconduct allegations not timely reported

In our review of the 18 untimely reported cases, cases were not formally reported until days, or in some cases months, after FS management officials were initially made aware of the allegations. FS supervisors and managers did not appear to fully understand their roles and responsibilities regarding the 24-hour reporting requirement. Below are two cases that illustrate untimely reporting and the actions the supervisor or manager took before formally reporting these allegations.

Case #1: [REDACTED]

²² FS Pacific Southwest Region (R5), Forest Service Manual 1700-Civil Rights, Chapter 1760-Employment Opportunity (June 19, 2015). This manual was amended on October 24, 2016; however, the changes made did not affect this finding.

²³ FS Washington Office, Forest Service Manual 1700-Civil Rights, Chapter 1760-Equal Employment Opportunity (August 25, 2016). This manual was amended on August 7, 2017; however, the changes made did not affect this finding.

[REDACTED]

Case #2:

[REDACTED]

Considering the actions the manager or the supervisor took before reporting the allegations in the cases above, the manager or the supervisor did not appear to fully understand the reporting requirements. In the remaining cases where FS inquired about the untimely reporting, we also determined, based on the responses these supervisors or managers provided, that they did not appear to fully understand the 24-hour reporting requirement. Although the 24-hour reporting requirement has been in effect since 2009, we believe additional training and guidance would be beneficial to ensure that all employees fully understand the 24-hour reporting requirement.

These two cases occurred after Region 5 issued its revised sexual harassment and sexual misconduct policy. Since then, FS has made efforts to improve its reporting process. In November 2017, FS established its harassment reporting center. As of March 2018, all reports of harassment, including sexual harassment and sexual misconduct, must be initiated through the reporting center.²⁴ Employees can call the reporting center and report the allegation themselves, or if the supervisor or manager was already informed, it would be the supervisor's or manager's responsibility to report the allegation for his or her employee. According to FS, 40 percent of the allegations received by the harassment reporting center are reported by the employee's supervisor or manager.²⁵

²⁴ The harassment reporting center is available 7 days a week, including holidays, from 7:00 am to 11:00 pm EST. The number for the harassment reporting center is 1-844-815-8943.

²⁵ Anti-Harassment & Harassment Reporting Center Data and Metrics (Updated May 25, 2018). The data received from FS did not specify the type of harassment that supervisors and managers reported. The data included all types of harassment.

FS took no disciplinary action against supervisors and managers for untimely reporting

In all 18 untimely reported cases, FS took no official disciplinary action against management officials for not formally reporting sexual harassment and sexual misconduct allegations timely. In 2 of the 18 cases, FS believed supervisors and managers reported the allegations timely, even though it took them more than 24 hours to formally report the allegations. In seven other cases, FS did not inquire about the untimely reporting, thus no actions were taken.

In 9 of the 18 cases, FS inquired about the untimely reporting. Of those nine cases, only five resulted in non-disciplinary actions against management officials. The officials were either given letters of warning, required to take specialized training in the prevention of sexual harassment, or a combination of both. However, even these non-disciplinary actions were often not taken against management officials until several months later. In the remaining four cases, no action, not even non-disciplinary action, was taken against management officials for untimely reporting.

Although both the FS Region 5 and Washington Office manuals prescribe that appropriate corrective and disciplinary action be implemented when an employee, manager, or supervisor does not follow procedures, the manuals do not specifically state what those corrective or disciplinary actions should be. Our review shows that FS took inconsistent actions when it came to untimely reporting. We attribute these inconsistencies to FS not having specific guidelines that address the action FS should take when supervisors or managers do not report sexual harassment and sexual misconduct allegations timely. We believe FS needs guidelines that specify what actions to take on untimely reporting for these types of complaints to ensure consistency.

OIG followed up with a Human Resources Management official from the Washington Office to gain perspective on the inconsistent actions taken for untimely reporting. The Human Resources Management official explained that the issue was a result of a lack of supervisory training on the revised policy and there was confusion on where and to whom to report, thus resulting in the inconsistent actions taken regarding untimely reporting. The Human Resources Management official added that FS takes this issue seriously and has implemented formal training since then. However, for FY 2017, we reviewed 26 sexual harassment and sexual misconduct intake forms and found 4 instances of untimeliness.²⁶ Of the four cases, FS inquired about the untimeliness of one and, as a result, prescribed training on the prevention of sexual harassment. In the remaining three cases, FS did not inquire about the untimely reporting, thus no actions were taken.

Due to the inconsistencies mentioned above, we urge that FS take additional steps to ensure timely reporting and consistent inquiry, and to take action against management officials who do not meet the 24-hour reporting requirement. Considering the sensitivity of the subject matter, we recommend FS require supervisors and managers to formally acknowledge their responsibility to report all allegations of sexual harassment and sexual misconduct within the required 24-hour

²⁶ These 26 intake forms were included in the 125 intake forms reviewed from FYs 2014–2017.

timeframe and record this acknowledgement. FS should also provide additional training and guidance to FS supervisors and managers on their roles and responsibilities regarding the 24-hour reporting requirement. Lastly, FS should establish guidelines to ensure that those FS supervisors and managers who do not timely report sexual harassment and sexual misconduct allegations within the required 24-hour timeframe are disciplined, when appropriate.

It is essential that FS employees have confidence and trust in their management's ability to report complaints of sexual harassment and sexual misconduct timely. The FS Washington Office manual states that "[t]he Forest Service can only take action if it knows about incidents of harassment." When supervisors or managers do not report these allegations timely, it does not help the situation or affected employees. How supervisors and managers handle these types of allegations is a direct reflection on the FS and how the agency, as a whole, responds to sexual harassment and sexual misconduct allegations. The reporting aspect is the first pivotal step in initiating the process and supervisors' and managers' roles in reporting these allegations timely is crucial.

Recommendation 5

Require FS supervisors and managers to formally acknowledge their responsibility to report all allegations of sexual harassment and sexual misconduct within the required 24-hour timeframe and record this acknowledgement.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service concurs with this recommendation. The Agency has already created, distributed and delivered this requirement. It is included in the Agency Anti-Harassment Policy (FSM 7165.08), and was discussed during the mandatory all employee Stand Up for Each Other Training, but no formal acknowledgement was required (other than to certify completion of the training). The Forest Service will create an annual certification through AgLearn, or a similar system, that will require all supervisors to acknowledge this requirement.

FS provided an estimated completion date of June 1, 2019, for this action.

OIG Position

We accept FS' management decision on this recommendation.

Recommendation 6

Provide additional training and guidance to FS supervisors and managers on their roles and responsibilities regarding the 24-hour reporting requirement.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service concurs with this recommendation, and has already accomplished this in FY18. Examples of efforts already completed by the Agency are:

- The creation of a Leader Guide and Leader Quick Reference Sheet in March 2018 that is available on our Anti-Harassment intranet page.
- Mandatory New Supervisor Training is required for all new supervisors in our Agency within their first year in a supervisory position. This training covers reporting requirements in detail.
- During the week of June 11, 2018, all employees participated in mandatory anti-harassment training titled, “Stand Up For Each Other.” This training covered reporting requirements in detail, to include the mandatory 24-hour requirement for sexual assault and sexual harassment allegations.

The USDA Forest Service will also continue to communicate this requirement through our already established mandatory annual anti-harassment training and adhoc training sessions to field supervisors to improve awareness of the Anti-Harassment policy and reporting requirements.

OIG Position

We accept FS’ management decision on this recommendation.

Recommendation 7

Establish guidelines to ensure that those FS supervisors and managers who do not timely report sexual harassment and sexual misconduct allegations within the required 24-hour timeframe are disciplined, when appropriate.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service concurs with this recommendation. The Agency communicated this requirement throughout FY18. The annual certification that will be implemented in AgLearn by June 2019, will establish guidelines and inform supervisors that failure to meet this requirement may result in disciplinary action. The Agency will closely monitor compliance of this requirement through current system resources and will initiate appropriate action for those supervisors and managers who do not timely report known allegations of sexual harassment or sexual misconduct within the required timeframes.

FS provided an estimated completion date of October 1, 2019, for this action.

OIG Position

We accept FS' management decision on this recommendation.

Finding 3: Justification for Decided Actions Not Adequately Documented in Case Files

For 4 of the 11 cases we reviewed where the allegations of sexual harassment and sexual misconduct were substantiated, the decided action was less than the corresponding penalty listed in USDA’s Guide for Disciplinary Penalties. Though alternate penalties may be appropriate given the circumstances of any particular situation, in three of the cases FS officials did not adequately document the justification for their decision. Due to the lack of documentation, there is no assurance that FS took consistent disciplinary actions appropriate to address sexual harassment and sexual misconduct.

The Departmental Personnel Manual states, “To achieve a reasonable degree of uniformity in the imposition of penalties, Agencies should consider the penalties suggested therein and normally apply or recommend those indicated unless there appears to be substantial justification for deviating therefrom. In such cases, the justification shall be set forth in detail in the case file.”²⁷

The purpose of the USDA Guide for Disciplinary Penalties is to assist those responsible for disciplining employees in selecting appropriate penalties for misconduct. While the Guide does not cover every possible offense, it does address the more common types of offenses and the penalties usually applied. The following table shows the offenses and corresponding penalties for sexual misconduct:²⁸

Table 1. List of Offenses and Corresponding Penalties for Sexual Misconduct

SEXUAL MISCONDUCT		
Type of Misconduct	Penalty for First Offense	Penalty for Subsequent Offense
a. Actual or attempted assault (e.g., rape)	Removal	
b. Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal	30-Day Suspension to Removal
c. Pressure for (or official action based on) sexual favors, including taking action favorable to an employee because of the granting of a sexual favor or denying an action favorable to an employee because of the withholding of a sexual favor.	30-Day Suspension to Removal	Removal

²⁷ Departmental Personnel Manual Chapter 751-1, Subchapter 1-2(a)(3), (Nov. 1981). According to a Human Resources Specialist within USDA’s Office of Human Resources Management, although cited in the section of the manual pertaining to removal, this criteria applies to all types of disciplinary action.

²⁸ Excerpted information from Departmental Personnel Manual Chapter 751, Appendix A, “USDA Guide for Disciplinary Penalties,” May 1994.

d. Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Letter of Reprimand to 30-Day Suspension	14-Day Suspension to Removal
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We reviewed case file documentation, such as the Employee Relations case assessment reports documenting the case review; the decision documentation, including the notice issued by the deciding official to the employee informing the employee of the disciplinary or non-disciplinary action; and the USDA Guide for Disciplinary Penalties to determine the penalties usually assessed for sexual misconduct. We noted three examples of sexual misconduct in which the FS officials did not apply the recommended penalty outlined in Table 1, and did not adequately document the justification for their decision in the case file. For example, in one case,

[REDACTED]

In another case,

[REDACTED]

Although the merits of each case must be evaluated in determining appropriate penalties, the Guide reflects penalties that are usually assessed for various types of misconduct, including sexual offenses. We recommend that FS establish internal guidelines that will ensure FS officials document in the case file their justification when deviating from the recommended penalty.

Recommendation 8

Establish internal guidelines that will ensure FS officials document in the case file their justification when deviating from the recommended penalty.

Agency Response

In its November 30, 2018, response, FS stated:

The USDA Forest Service generally concurs with this recommendation. The Agency will establish an internal process that will ensure FS managers provide documentation to justify any deviation from the recommended penalty of the USDA Guide for Disciplinary Penalties within the case file.

FS provided an estimated completion date of June 1, 2019, for this action.

OIG Position

We accept FS' management decision on this recommendation.

Scope and Methodology

The scope of our work covered the actions FS took in response to complaints of sexual harassment and sexual misconduct in the workplace from FY 2013 to the present. To accomplish our audit objectives, we performed fieldwork at FS' Washington Office in Washington, D.C.; FS' Pacific Southwest Regional Office in Vallejo, California; two national forests within the Pacific Southwest Region; and two ranger districts—one within each national forest (for specific locations visited, see Exhibit A). We non-statistically selected the two national forests and two ranger districts based on their high number of sexual harassment and sexual misconduct cases and the number of employees that requested interviews with OIG. We performed our audit fieldwork from February 2017 through July 2018.

To develop the findings for this report, we performed the following steps and procedures:

- Reviewed applicable laws, regulations, and agency policies and procedures concerning sexual harassment and sexual misconduct in the workplace;
- Interviewed FS Washington Office officials, including the Deputy Chief for Business Operations and National Civil Rights Director, to determine their roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;
- Interviewed FS Washington Office Human Resources Management officials, including the Assistant Director for Employee Relations, regarding FS' use of reference checks during the hiring process and FS' use of USDA's Guide for Disciplinary Penalties;
- Interviewed FS Pacific Southwest Regional Office officials, including the Regional Forester and Civil Rights Director, to determine their roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;
- Interviewed FS officials from selected national forests and district ranger offices, including the [REDACTED] and [REDACTED], to determine their roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;
- Interviewed officials from OASCR, including its Acting Deputy Assistant Secretary for Civil Rights, to determine their roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;
- Interviewed officials from OGC to determine their roles, responsibilities, and opinions on the actions FS has taken to address sexual harassment and sexual misconduct in the workplace;

- Interviewed officials from the Department’s Office of Human Resources Management regarding USDA’s Guide for Disciplinary Penalties;
- Interviewed 34 FS Pacific Southwest Region employees who requested interviews with OIG regarding FS’ actions to address sexual harassment and sexual misconduct in the workplace;²⁹
- Interviewed 35 randomly selected FS Pacific Southwest Region employees from the sites we visited regarding FS’ actions to address sexual harassment and sexual misconduct in the workplace;³⁰
- Reviewed the intake forms for 125 complaints of sexual harassment and sexual misconduct in Region 5 from FYs 2014–2017 to determine whether supervisors and managers met the 24-hour reporting requirement and if not, whether disciplinary action was taken; and
- Reviewed 35 non-statistically selected sexual harassment and sexual misconduct cases to determine whether the decisions made regarding the cases were timely and adequately supported.³¹

During the course of our audit, we did not solely rely on nor verify information in any agency information systems. We also make no representation regarding the adequacy of any agency computer systems, or the information generated from them because evaluating the effectiveness of information system or information technology controls was not one of the audit’s objectives.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

²⁹ OIG offered all employees in Region 5 the opportunity to be interviewed regarding FS’ actions to address sexual harassment and sexual misconduct in the workplace. On March 28, 2017, the Regional Forester sent out an email to all Region 5 employees notifying them of the opportunity to be interviewed. Of the 34 employees interviewed, 3 were former Region 5 employees.

³⁰ We used a simple random sampling technique to select employees from the sites we visited. We selected the employees from a listing FS provided us of all its full-time, part-time, temporary, and seasonal employees who were employed at the sites we visited at the time of our request.

³¹ At the FS units we visited in Region 5, we reviewed all of the sexual harassment and sexual misconduct cases for FYs 2014–2016. We also reviewed additional cases in Region 5 that were determined from our review of selected cases from the sites we visited or from interviews with Region 5 employees who were randomly selected for interviews or requested interviews with OIG.

Abbreviations

FS	Forest Service
FY	fiscal year
GAO	U.S. Government Accountability Office
MSPB.....	Merit Systems Protection Board
OASCR	Office of the Assistant Secretary for Civil Rights
OGC	Office of the General Counsel
OIG	Office of Inspector General
USDA.....	Department of Agriculture

Exhibit A: Audit Sites Visited

This exhibit shows the name and location of all FS sites visited.

AUDIT SITE	LOCATION
FS Washington Office	Washington, D.C.
<p>FS Pacific Southwest Region (Region 5)</p> <p><u>National Forests</u></p> <p>Lassen National Forest Sequoia National Forest</p> <p><u>Ranger Districts</u></p> <p>Eagle Lake Ranger District Kern River Ranger District</p>	<p>Vallejo, CA</p> <p>Susanville, CA Porterville, CA</p> <p>Susanville, CA Kernville, CA</p>

Exhibit B: Status of Action Items from Joint Agreement

This exhibit shows the status of the action items from the joint agreement between FS, OASCR, and OGC.

Action Item	Status
1. Reorganize FS' Civil Rights Structure.	On September 29, 2016, FS realigned its Office of Civil Rights. Under the realignment, the National Civil Rights Director reports directly to the FS Chief and the Regional Civil Rights Directors, and other regional office civil rights staff report directly to the National Civil Rights Director.
2. Conduct Independent Climate Assessment in Region 5.	FS hired an outside contractor to conduct a climate assessment of FS' Region 5. The contractor issued its Region 5 Workplace Environment Assessment Report on November 30, 2015.
3. Hold the FS Accountable for the Effectiveness of its Prevention of and Response to Sexual Harassment and Other Sexual Misconduct in Region 5.	As required by the joint agreement, in 2015 FS issued an Enhanced Agency Head Assessment. The assessment covered six of the eight action items included in the joint agreement. In the assessment, FS provided details on the actions it took to address the joint agreement's six action items.
4. Strengthen and Enhance Compliance with Sexual Misconduct Policies.	On February 27, 2015, FS' Region 5 issued a memorandum to all employees reiterating its zero tolerance policy and reporting requirements. FS also took the lead in piloting USDA's certification requirement by having employees acknowledge receipt of USDA's harassment policy. FS also kept OASCR updated on its completion status, which ranged from 93 to 97 percent.

Action Item	Status
5. Strengthen Region 5's Sexual Misconduct and Harassment Reporting and Response Standard Operating Procedures.	On June 22, 2015, FS' Region 5 issued a memorandum informing all Forest Supervisors and Staff Directors that Region 5 had updated on June 19, 2015, their Region 5 Directive Policy for Handling Allegations of Sexual Harassment and Reprisal for Sexual Harassment-Related Civil Rights Activity. The new policy outlines the roles, responsibilities, and timeframes for reporting, inquiring/investigating, and taking appropriate action regarding allegations of sexual harassment and related reprisal.
6. Engage OASCR and OGC to Provide Input to FS' Ongoing Efforts to Improve the EEO Informal Process and Conduct a Joint Quality Control Review of Region 5's Processing of Informal EEO Complaints.	FS, OASCR, and OGC created a team of subject matter experts to review a random sample of informal EEO complaints from Region 5 employees from FYs 2013–2014. These Region 5 employees alleged sexual or gender-based harassment, or related retaliation. The team reviewed 26 complaints and reported the details of their review on March 21, 2016.
7. Meaningfully Involve OASCR in Reviewing and Expanding Region 5 Civil Rights Trainings.	On December 30, 2014, FS provided OASCR's Training Division its training materials for both the Civil Treatment for Leaders and Prevention of Sexual Harassment (POSH) training courses. FS also provided its evaluation form for the POSH training course to OASCR to obtain its feedback. FS incorporated OASCR's feedback in all of its trainings.
8. Meaningful and Ongoing Engagement with OASCR in Region 5 Civil Rights Issues.	During the implementation of the action items in the joint agreement, FS engaged with OASCR and kept it apprised of pertinent details regarding the implementation of each action item. For example, FS provided OASCR quarterly reports on all agency misconduct and EEO data.

**AGENCY'S
RESPONSE TO AUDIT REPORT**



File Code: 1430

Date: November 30, 2018

Route To:

Subject: Forest Service Response to Reach Management Decision on Office of Inspector General Report No. 08601-0008-41 Forest Service Initiatives to Address Workplace Misconduct

To: Gil H. Harden, Assistant Inspector General for Audit, Office of Inspector General

Thank you for the opportunity to review and comment on Office of Inspector General (OIG) Draft Report Number 08601-0008-41. The Forest Service generally concurs with the findings and recommendations and appreciates the time and effort that went into the report. The Agency's response to the audit recommendations is enclosed. Please contact Antoine L. Dixon, Chief Financial Officer, at (202) 205-0429 or aldixon@fs.fed.us with any questions.

//Signed//

LENISE LAGO

(For Chief)

Enclosures



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USDA Forest Service (FS)

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Office of Inspector General (OIG) Audit Report No. 08601-0008-41

Forest Service Initiatives to Address Workplace Misconduct

Official Draft Issued November 8, 2018

Response to the Official Draft Report / Management Decision Request

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Recommendation 1: Provide additional training and guidance to supervisors on the Merit Systems Protection Board (MSPB) and Office of Personnel Management (OPM) guidelines regarding their responsibility to provide complete and accurate information to hiring officials when asked for references on current and former Forest Service (FS) employees seeking employment or promotions within FS. The training and guidance should also cover privacy and liability concerns when disclosing employee information.

FS Response: The USDA Forest Service concurs with this recommendation. FS requires all hiring managers to complete the Hiring Matters! training in AgLearn. This training is mandated by USDA Office of Human Resources Management (OHRM) and it covers Merit System Principles, Prohibited Personnel Practices, and provides guidance regarding interviews and conducting reference checks. Reports are available to show training participation and completion.

To supplement the above required training, FS will:

1. Review and update previous guidance provided to supervisors and managers covering their responsibility to reply completely and accurately when asked for references on current and former Forest Service (FS) employees seeking employment or promotions within FS;
2. Develop scenario-based training for supervisors which supplements the required USDA training with an emphasis on legally providing information when asked for a reference check. AgLearn, or another training platform or methodology, will be utilized to house this training which will allow for tracking; and
3. Ensure scenario-based training referred above covers privacy and liability concerns when disclosing employee information.

Estimated Completion Date: June 1, 2019

Recommendation 2: Add, to the standardized list of questions that hiring officials ask the supervisors of current and former FS employees applying for positions within the agency,

questions about whether applicants have a prior history of serious misconduct, the nature of the misconduct, and their suitability for the position despite the misconduct.

FS Response: The USDA Forest Service generally concurs, but has concerns with the legality of implementing the recommendation as written. Before moving forward we will need to seek guidance and concurrence from the Office of the General Counsel (OGC) and OHRM. Our initial concerns include:

- 1) Protecting the Agency from liability caused by hiring managers asking questions that are too detailed regarding prior discipline. This could lead to violations of Merit Systems Principles and/or the Privacy Act.
- 2) Placing supervisors in the position of having to violate a settlement agreement that requires them to not disclose certain information without legal risk to the Agency or themselves.
- 3) Inconsistent approaches for internal and external applicants which may lead to potential violations of Merit System Principles and the USDA Merit Promotion Plan. Reference checks must be consistent for all applicants to maintain fair and open competition. Asking different questions to different applicants could lead to these violations.

The Agency will collaborate with OGC and OHRM to see if there is an appropriate way that we can revise our existing, optional, standardized template containing reference questions to include questions responsive to OIG's recommendation.

Estimated Completion Date: October 1, 2019.

Recommendation 3: Add, to the standardized list of questions that hiring officials ask the applicants applying for positions within FS, questions about whether applicants have a prior history of serious misconduct, the nature of the misconduct, and their suitability for the position despite the misconduct.

FS Response: The USDA Forest Service generally concurs with this recommendation. Interviews are an effective tool in evaluating candidates for appointment to Federal positions. FS provides interview and reference check guides that are on the Human Resource Management (HRM) website. The guides outline the role and responsibility of the hiring official and give parameters of what can be asked. Asking specific questions regarding an employee's prior discipline and the specifics around that could lead to violations of the Privacy Act and Merit Systems Principles which could create liability for the Agency. The Agency will collaborate with OGC and OHRM to see if there is an appropriate way that we can require questions responsive to OIG's recommendation.

Estimated Completion Date: December 1, 2019

Recommendation 4: Establish guidelines for hiring officials to contact human resources management to determine whether current or former employees (including seasonal employees) applying for positions within FS have prior histories of serious misconduct and the nature of the misconduct.

FS Response: The USDA Forest Service generally concurs with the intent of this recommendation but has significant concerns with the legality and feasibility of implementing it as written. Areas of concern that the Agency needs to avoid are violations of the Privacy Act, Merit Systems Principles, or any other employment law. For example, we do not want to set up a process where an individual could release information in violation of the Privacy Act or Office of Personnel Management rules and regulations on appropriate use/release of information contained within personnel files. Likewise, we do not want to increase risk in employment litigation caused by creating a higher bar or enacting a more strenuous process for internal applicants. This is something that could definitely be argued is a violation of Merit System Principles requiring fair, equal, and open competition based on the duties of the position. The Agency will collaborate with OGC and OHRM and ask them to determine if this recommendation is achievable.

Estimated Completion Date: December 1, 2019

Recommendation 5: Require FS supervisors and managers to formally acknowledge their responsibility to report all allegations of sexual harassment and sexual misconduct within the required 24-hour timeframe and record this acknowledgement.

FS Response: The USDA Forest Service concurs with this recommendation. The Agency has already created, distributed and delivered this requirement. It is included in the Agency Anti-Harassment Policy (FSM 7165.08), and was discussed during the mandatory all employee Stand Up for Each Other Training, but no formal acknowledgement was required (other than to certify completion of the training). The Forest Service will create an annual certification through AgLearn, or a similar system, that will require all supervisors to acknowledge this requirement.

Estimated Completion Date: June 1, 2019

Recommendation 6: Provide additional training and guidance to FS supervisors and managers on their role and responsibilities regarding the 24-hour reporting requirement.

FS Response: The USDA Forest Service concurs with this recommendation, and has already accomplished this in FY18. Examples of efforts already completed by the Agency are:

- The creation of a Leader Guide and Leader Quick Reference Sheet in March 2018 that is available on our Anti-Harassment intranet page. (Copies attached)

- Mandatory New Supervisor Training is required for all new supervisors in our Agency within their first year in a supervisory position. This training covers reporting requirements in detail. (Copy of Facilitator Guide attached)
- During the week of June 11, 2018, all employees participated in mandatory anti-harassment training titled, “Stand Up For Each Other.” This training covered reporting requirements in detail, to include the mandatory 24-hour requirement for sexual assault and sexual harassment allegations. (This is discussed in Chapter 4 at approximately the 10 min mark. Link to video is: <https://vimeo.com/forests-service/anti-harassment-awareness-training/video/269007251>.)

The USDA Forest Service will also continue to communicate this requirement through our already established mandatory annual anti-harassment training and adhoc training sessions to field supervisors to improve awareness of the Anti-Harassment policy and reporting requirements.

Estimated Completion Date: Completed.

Recommendation 7: Establish guidelines to ensure that those FS supervisors and managers who do not timely report sexual harassment and sexual misconduct allegations within the required 24-hour timeframe are disciplined, when appropriate.

FS Response: The USDA Forest Service concurs with this recommendation. The Agency communicated this requirement throughout FY18. The annual certification that will be implemented in AgLearn by June 2019, will establish guidelines and inform supervisors that failure to meet this requirement may result in disciplinary action. The Agency will closely monitor compliance of this requirement through current system resources and will initiate appropriate action for those supervisors and managers who do not timely report known allegations of sexual harassment or sexual misconduct within the required timeframes.

Estimated Completion Date: October 1, 2019

Recommendation 8: Establish internal guidelines that will ensure FS officials document in the case file their justification when deviating from the recommended penalty.

FS Response: The USDA Forest Service generally concurs with this recommendation. The Agency will establish an internal process that will ensure FS managers provide documentation to justify any deviation from the recommended penalty of the USDA Guide for Disciplinary Penalties within the case file.

Estimated Completion Date: June 1, 2019

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